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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 PETER T. HARRELL,

12 Plaintiff,

No. CIV S-05-0420 GEB CMK

13 vs.

14 DARREL LEMOS, et al.,

15 Defendants.

ORDER

16 _____/
17 Plaintiff, who is proceeding without counsel and in forma pauperis, has filed this
18 civil rights action against several defendants. This case has been reopened following a remand
19 by the Court of Appeals for the Ninth Circuit. Both parties have filed status reports as required.

20 This case was originally dismissed in January 2007, without prejudice, for failure
21 to state a claim pursuant to Heck v. Humphrey, 512 U.S. 477 (1994). The decision to dismiss
22 this action was made prior to the United States Supreme Court's decision in Wallace v. Kato,
23 549 U.S. 384, 127 S. Ct. 1091, 1098 (2007). As a result of the Supreme Court decision in
24 Wallace, the Ninth Circuit filed a memorandum opinion vacating this court's dismissal and
25 remanded this matter back to this court for further proceedings.

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1 This case was originally dismissed because, pursuant to Heck v. Humphry,
2 plaintiff had to prove that his underlying conviction or sentence had been reversed on direct
3 appeal or called into question by the issuance of a writ of habeas corpus. See 512 U.S. at 486-87.
4 However, in Wallace v. Kato, the Supreme Court clarified that if a plaintiff files a § 1983 action
5 while a criminal case from which the civil claim arises is still pending (i.e., before the plaintiff
6 has been convicted), the district court has the discretion to stay the action until the criminal case
7 is ended. See 127 S. Ct. at 1097-98.

8 The parties agree that the criminal case from which this matter arises is still
9 pending in the Siskiyou County Superior Court. The court finds it appropriate to stay this action
10 in its entirety. The parties will be required to file periodic status reports to keep the court
11 apprised of the status of the state court proceedings.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. This action is stayed in its entirety;
- 14 2. The parties are required to a file status reports within 90 days of the date of
15 service of this order advising the court of the status of the underlying state court proceedings;
- 16 3. The parties are required to file a new status report every 90 days thereafter,
17 until otherwise instructed; and
- 18 4. The Clerk of the Court is directed to administratively close this case.

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20 DATED: December 22, 2008

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22 **CRAIG M. KELLISON**
23 UNITED STATES MAGISTRATE JUDGE
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